IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5270 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI GANESHBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR FB BRAHMBHATT for Petitioner(s) : 1,
MR SATYAM CHAYYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR MANISH J PATEL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 31/01/2007

ORAL JUDGMENT

1. The short facts of the case are that the

petitioner who was Sarpanch of Tiski Gram Panchayat, was served with the show-cause notice for removal under Section 57 of the Gujarat Panchayat Act(hereinafter referred to as 'the Act'). The petitioner submitted his reply and hearing was given to the petitioner. Thereafter, on 27.12.2005, the District Development Officer, Sabarkantha District Panchayat, passed an order for removal of the petitioner under Section 57 of the Act. The petitioner carried the matter before the Development Commissioner in Appeal and the said Appeal came to be dismissed on 07.03.2006 and it is under these circumstances, the present petition.

2. Heard Mr. Brahmbhatt, learned counsel appearing for the petitioner, Mr. Patel for respondent No.2 and Mr. Chayya, learned AGP for respondent No.1.

3. Mr. Brahmbhatt, learned counsel for the petitioner raised contention that against the resolution of the Gram Panchayat, the petitioner cannot be made responsible in his individual capacity and he submitted that there are other remedial measures available for suspending the resolution of the Gram Panchayat etc. and therefore, the action of removal under Section 57 of the Act is not warranted under the law.

4. The said contention on behalf of the petitioner deserves to be rejected outright so far as it

relates to other remedial measures are concerned. Merely because there are other remedial measures available under the Act, one who is found to have committed misconduct, cannot be heard to say that the other remedial measures could have been taken. Further, it deserves to be recorded that in cases where the conditions are satisfied for misconduct under Section 57, the intention of the legislature is to keep such persons away from the administration and therefore, if the power is exercised upon the satisfaction recorded by the Authority that the misconduct is committed, such an exercise of the power cannot be said to be without jurisdiction merely because other remedial measures are provided under the Act for suspending the resolution etc.

5. It is true that if the resolution is passed by the Panchayat and if the action is taken by the Authority based on the only resolution, the Sarpanch in his individual capacity may not be found only responsible when it is an action of the whole body. But, in cases where the finding of the misconduct recorded is also with the other actions taken by the Sarpanch in his individual capacity, the order cannot be said as illegal or arbitrary. The perusal of the show-cause notice, the orders passed by the authority viz. the District Development Officer as well as the Development Commissioner show that apart

from the aspects of passing by the resolution by the Gram Panchayat for regularisation of the encroachment, the petitioner in his individual capacity is found to have committed misconduct in restoring construction which was already removed as alleged encroachment made by Ganesh Khadi Gram Udhyog Trust. It is also found by the authority that the petitioner has caused financial loss to the Gram Panchayat by not properly undertaking auction for disposal of the trees well in time and it is also found by the authority that the petitioner by producing bogus signature of consent letter, has misguided the office of the Taluka Panchayat. Therefore, the impugned order passed by the Authority is not only based on the resolution of the Gram Panchayat but is coupled with the other actions committed by the petitioner in capacity as Sarpanch which are found as misconduct by the authority. Therefore, I find that irrespective of the aspects of the resolution having been passed by the body of the Gram Panchayat, the impugned order cannot be said as vulnerable, if passed against the petitioner on the basis of the misconduct committed by him additionally in his individual capacity.

6. Mr. Bramhbhatt, learned counsel appearing for the petitioner attempted to submit that the action is based on the report of Taluka Development Officer and he submitted that in the

report dated 11.02.2005 of Taluka Development Officer, the petitioner was found as not responsible for certain alleged action and therefore, he submitted that the authority could not have recorded the finding which was not opined by the Taluka Development Officer in the report dated 11.02.2005.

7. In my view, such contention is not only on misconception but is factually ill founded. The report of the Taluka Development Officer is dated 01.09.2004, copy whereof is produced at Annexure-R/1, which was the basis for the purpose of initiation of the action under Section 57(1) of the Act. In the said report, the opinion of Taluka Development Officer is against the petitioner on various aspects including on the aspects that inspite of the specific intimation given by the Deputy Executive Engineer, R & B, no action is taken by Sarpanch for prohibiting the construction. After the report, during the course of the hearing, the representation is made by the Taluka Panchayat and the same is dated 11.02.2005. In the matter of exercise of the power by the District Development Officer as a quasi judicial authority, the opinion of the Taluka Development Officer or the remarks of the Taluka Panchayat may have the relevance but the same may not be the sole basis for the purposes of exercising the power as quasi judicial authority under

Section 57 of the Act. After considering the remarks of Taluka Panchayat, if the District Development Officer upon the examination of the facts finds that certain allegations relating to the petitioner in his individual capacity are proved, so as to attract the exercise of the power under Section 57 of the Act, the petitioner cannot validly contend that merely because the remarks of Taluka Development Officer in the subsequent correspondence during the course of the hearing were otherwise, the District Development Officer could not have taken the decision for arriving at the satisfaction that the misconduct is committed. Apart from the above, it deserves to be recorded that even if such remarks are considered as it is, then also qua charges Nos. 4,8,10 & 11, the remarks are for supporting the action under Section 57 of the Act. Therefore, the said contention on behalf of the petitioner is factually ill-founded and therefore, cannot be accepted.

8. Mr. Brahmbhatt, learned counsel appearing for the petitioner submitted that there are other grounds, which cannot be considered as valid for the purpose of exercise of the power under Section 57 of the Act. He submitted that in the subsequent proceeding of revision before the State Government preferred by Ganesh Khadi Gram Udhyog Trust in which the petitioner is also the

President, the order of the Collector of cancelling the entry is set aside and the revision is allowed. He therefore submitted that under these circumstances, the construction made by the said Trust cannot be said as illegal or that it cannot be said that there was encroachment. He further submitted that so far as the criminal case is concerned, as such, the same cannot be the basis and further in any case, C-Summary has been filed by the Police. Therefore, such ground for removal of the petitioner under Section 57 of the Act cannot be said as valid and therefore, this Court may set aside the order and the petitioner should be allowed to continue to hold the post.

9. In the matter of exercise of the power under Section 57 of the Act, the scope of judicial scrutiny by this Court would be mainly on the procedural aspects and also on the aspects of observance of principles of natural justice. The Court would normally consider as to whether the subjective satisfaction recorded by the authority was based on the material or not. The degree or the quantum of the material is not to be weighed by the Court unless finding recorded on the material is ex-facie absurd or is perverse to the record. If such test are applied and if the subsequent order passed by the State Government dated 13.12.2006 in the revisional proceedings are concerned, it would be of no

help to the petitioner inasmuch as the findings recorded by the authority is not that since the order of the Collector was passed, the encroachment was proved and the encroachment was not removed. But, it appears from the report of the Taluka Development Officer dated 01.09.2004 that for the additional land, application was made and anticipating the allotment of land, the construction was already made. Further, if the construction was already removed, the petitioner, who was holding dual capacity as the President of the Trust and as Sarpanch of the Gram Panchayat, could not have permitted the reconstruction which was already removed unless and until the order of the Collector was set aside. If the petitioner in capacity as Sarpanch permitted the construction by the Trust where he is also the President, it can be said that there is failure to discharge the duty on the part of the Sarpanch for protecting the properties of the Gram Panchayat. Further, even if the pendency of the criminal case is not considered for the exercise of the power under Section 57 of the Act, there are more than five grounds for which the finding is recorded against the petitioner for committing misconduct. Therefore, the order passed under Section 57 cannot be said as without there being any material before the State Government for exercise of the power under Section 57 of the Act nor the finding recorded by the authority

can be said as perverse to the record or absurd on the face of it.

10. The learned counsel appearing for the petitioner relied upon the decision of this Court in the case of Kamlaben Rohitbhai Patel V. Additional Development Commissioner reported at 2000(2) GLR 1174 for contending that the Sarpanch cannot be removed for procedural irregularities or accounting procedure and therefore, he submitted that for the auction of Mango tree, the petitioner cannot be said as individually responsible and consequently exercise of the power under Section 57 of the Act was not warranted. As observed earlier, the ground for exercise of the power is not that of procedural lapse, but the finding recorded is for loss to the Gram Panchayat in the process of holding auction. Therefore, the said decision is of no help to the petitioner.

11. The learned counsel for the petitioner also relied upon the other decision of this Court in case of Harsukhbhai Gordhanbhai Hadvani v. State of Gujarat & Ors. reported at 2000(1) GLR 32 and by relying upon the observations made in the said decision, he has contended that the power is required to be exercised with proper application of mind and if there is no application of mind, the order deserves to be interfered with by this Court. As recorded

hereinabove, it cannot be said that the exercise of the power by the first authority and its confirmation thereof by the Additional Development Commissioner is without proper application of mind. Hence, the said decision is of no help to the petitioner.

12. Mr. Brahmbhatt, learned counsel appearing for the petitioner also relied upon the another decision of this Court in the case of Bikhumiya Sarfumiya Malek V. District Development Officer, Mahesana reported at 1999(3) GLR 2693 for contending that removal or suspension on mere filing of the charge-sheet is not sufficient ground for exercise of the power.

13. As observed earlier, firstly it was a case of exercise of power under Section 59 of the Act and not under Section 57 of the Act. Section 59 of the Act provides for inbuilt power with the authority for suspending the person holding the post on the ground of the pendency of the criminal case relating to moral turpitude whereas Section 57 of the Act provides for removal on the ground of misconduct. There is no exercise of the power by the Authority under Section 59 of the Act in the present case. Therefore, the said decision is of no help to the petitioner.

14. In view of the above, if the subjective satisfaction is arrived by both the authorities

on the aspects that the petitioner in the capacity as Sarpanch has misused his position and has committed misconduct, this Court would not sit in appeal over the said decision while exercising the power under Article 226/227 of the Constitution.

15. In view of the above, the petition fails. Rule discharged. Interim relief vacated.

(JAYANT PATEL, J.)

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